

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION AT MEMPHIS

ROY ROBERTSON, Individually, and on
behalf of the wrongful death beneficiaries of
MARY PEARL ROBERTSON, deceased

PLAINTIFF

v.

No.

UT METHODIST PHYSICIANS, LLC
and BENNY WEKSLER, MD

DEFENDANTS

Jury Trial Demanded

COMPLAINT

COMES NOW the Roy Robertson, by and through his attorneys, Chapman, Lewis & Swan, PLLC, and for his Complaint would show unto the Court as follows:

Parties

1. The Plaintiff Roy Robertson is an adult resident citizen of Batesville, Mississippi. Roy Robertson is the surviving spouse of Mary Pearl Robertson, deceased. This Plaintiff brings this action as surviving spouse of Mary Pearl Robertson pursuant to Tenn. Code Ann. §20-5-110, both individually and on behalf of the wrongful death beneficiaries of Mary Pearl Robertson. At the time of her death, Mary Robertson was also survived by her son Johnny Robertson, a resident of Kosciusko, Mississippi.

2. The Defendant UT METHODIST PHYSICIANS, LLC (hereafter "UTMP") is a Tennessee limited liability company with its principal place of business being located at 1211 Union Ave., Suite 700, Memphis, TN. This Defendant may be served with process at by service upon its registered agent, Monica Wharton, 1211 Union Ave., Suite 700, Memphis, TN

3. The Defendant Benny Weksler, MD is a physician residing and practicing in

Memphis, Tennessee. This Defendant may be served at his place of business, UTMP.

Jurisdiction

4. This Court has jurisdiction over the parties and subject matter pursuant to 28 U.S.C. §1332 in that there is a complete diversity of citizenship between all plaintiffs and all defendants and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

Venue

5. Venue is proper in the United States District Court for the Western District of Tennessee, Western Division, in that the acts or omissions complained of occurred in whole or in part in Shelby County, Tennessee, a county within the Western Division.

Factual Statement

6. Mary Pearl Robertson, deceased, was a 76 year mother of two children. Mary was married to Roy Robertson in December 1958.

7. Mary Robertson was gainfully employed, working full time for David Ball, MD in Batesville, MS.

8. On October 26, 2017, Mary Robertson underwent a redo laparoscopic surgery for a paraesophageal hernia performed by Dr. Weksler at Methodist University Hospital in Memphis.

9. During the procedure Dr. Weksler fired a LigaSure device and perforated the left atrium of Mary Robertson's heart, and saw brisk bleeding.

10. Dr. Weksler performed a laparotomy (an opening of the abdominal cavity) and placed his hand to attempt to stop the bleeding. Dr. Weksler requested assistance from Dr. Ed Owen, who performed a sternotomy. Despite attempts to stop the bleeding, Mary Robertson died on the operating table.

11. Dr. Weksler breached the acceptable standard of professional practice standard of

professional practice of surgeons performing surgery for paraesophageal hernia surgery in Memphis, Tennessee, or similar medical communities, in firing the LigaSure device blindly high in the chest, perforating the heart, and causing Mrs. Robertson's death, which would not have otherwise occurred.

12. At all relevant times Dr. Weksler was an employee, agent, or apparent agent of UTMP, and UTMP is vicariously liable for the acts or omissions of its actual and/or apparent agent Weksler, who was acting within the scope and course of his employment or agency.

13. As a direct and proximate result of the negligence of Dr. Weksler, UTMP's employee, agent or apparent agent, Mary Robertson died.

14. Plaintiff seeks all damages recoverable under applicable Tennessee law for the pecuniary value of the life of Mary Robertson, including but not limited to, the pain and suffering of Mary Robertson, the loss of earnings and earning capacity of Mary Robertson, the funeral expenses of Mary Robertson, the loss, love and society and companionship and consortium suffered by Roy Robertson for the loss of his wife, and the loss, love and society and companionship and consortium suffered by the Johnny Robertson for the loss of his mother. Plaintiff seeks such and further damages as may be proved at trial.

Notice of Claim

15. Prior to maintaining this action Plaintiff has given Defendants written notice of a potential claim in accordance with Tennessee Code Annotated §29-26-121 within the applicable statute of limitations and statute of repose. The Notice Letter included a HIPPA compliant medical authorization which allowed each defendant to obtain medical records of Mary Pearl Robertson from each defendant given notice. The Affidavit of Plaintiff's counsel and proof of service is attached hereto as **Exhibit A**, and incorporated herein.

Certificate of Good Faith

16. Prior to the institution of this action, the undersigned counsel has consulted with one or more experts who have provided a signed written statement confirming that upon information and belief they are (a) competent under §29-26-115 to express an opinion or opinions in the case; and (b) believe, based on the information available from the medical records concerning the care and treatment of the Plaintiff for the incident or incidents at issue, that there is a good faith basis to maintain the action consistent with the requirements of §29-26-115. A Certificate of Consultation by Plaintiff's counsel in the form prescribed by the Tennessee Administrative Office of the Courts is attached hereto as **Exhibit B**, and incorporated herein by reference.

WHEREFORE, premises considered, Plaintiff demands compensatory damages of and from the Defendants in an amount determined by the jury, not less than \$75,000.00, plus all court costs assessed by the clerk. Plaintiff demands a jury trial on all issues so triable.

Respectfully submitted,

CHAPMAN, LEWIS & SWAN, PLLC.

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